



**DECLARATION AND POWER OF ATTORNEY**  
**Original Application**

As below named inventor, I declare that I have reviewed and understand the contents of the specification, including the claims, as amended by any amendment specifically referred to in this Declaration, that the information given herein is true, that I believe that I am an original, first and joint inventor of the invention entitled:

**AUDIO SYNTHESIS USING DIGITAL SAMPLING OF CODED WAVEFORMS**

which is described and claimed in:

the attached specification or  
 the specification in application Serial No. 09/505,486 filed February 16, 2000.  
 I hereby claim the benefit under title 35, United States Code, Section 119(e) of the United States provisional application listed below

60/120,717 February 16, 1999  
(Application Number) Filing Date

that I acknowledge my duty to disclose information in accordance with 37 C.F.R. Section 1.56 and defined on the attached sheet, which is material to the examination of this application, that I do not know and do not believe the same was ever known or used in the United States of America before my invention thereof or patented or described in any printed publication in any country before our invention thereof, or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application and that as to applications for patent or inventor's certificate filed by me or my legal representatives or assigns in any country foreign to the United States of America, the earliest filed foreign application(s) filed within twelve months prior to the filing date of this application and all foreign applications filed more than twelve months prior to the filing date of this application, if any, are identified below.

**CHECK APPROPRIATE BOX**

No earlier-filed foreign applications.  
 Required information as to foreign applications filed prior to filing date of this application is on page 5 attached hereto and made a part hereof.

**POWER OF ATTORNEY:**

As named inventors, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

<u>NAME</u>	<u>REGISTRATION NO.</u>
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John F. Schipper	26,994
Stanley N. Protigal	28,657
Richard E. Bee	18,005
George M. Steres	36,690
of SABATH & TRUONG	

**SEND CORRESPONDENCE TO**

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FULL NAME OF INVENTOR 1	LAST NAME <b>BRATTON</b>	FIRST NAME <b>TIMOTHY</b>	MIDDLE NAME <b>ROBERT</b>	
RESIDENCE & CITIZENSHIP	CITY <b>LOS ALTOS</b>	STATE OR FOREIGN COUNTRY <b>CALIFORNIA</b>	COUNTRY OF CITIZENSHIP <b>USA</b>	
POST OFFICE ADDRESS	POST OFFICE ADDRESS <b>101 FIRST STREET PMB 549</b>	CITY <b>LOS ALTOS</b>	STATE OR COUNTRY <b>CA</b>	ZIP CODE <b>94022</b>

We further declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Name (Inventor 1) <b>TIMOTHY ROBERT BRATTON</b>	Signature 	Date <b>4/17/00</b>
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**Section 1.56 Duty to Disclose Information Material to Patentability.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by Sections 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the application takes in:

(i) opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any considerations given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent or inventor.

## SABATH &amp; TRUONG

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Applicant or Patentee: Timothy Robert Bratton  
 Serial or Patent No.: 09/505,486 Atty. Dkt. No.: 6037-003  
 Filed or Issued: February 16, 2000  
 For: AUDIO SYNTHESIS USING DIGITAL SAMPLING OF CODED WAVEFORMS

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS  
 (37 CFR 1.9(f) and 1.27(c)) - SMALL BUSINESS CONCERN**

I hereby declare that I am

the owner of the small business concern identified below:  
 an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN TuneTo.com, Inc.  
 ADDRESS OF CONCERN 303 Twin Dolphin Drive  
Redwood City, California 94065

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled AUDIO SYNTHESIS USING DIGITAL SAMPLING OF CODED WAVEFORMS  
 by inventor(s) Timothy Robert Bratton  
 described in

the specification filed herewith  
 Application Serial No. \_\_\_\_\_, filed \_\_\_\_\_  
 Patent No. \_\_\_\_\_, issued \_\_\_\_\_

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(d) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e). \*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities (37 CFR 1.27)

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 INDIVIDUAL  SMALL BUSINESS CONCERN  NONPROFIT ORGANIZATION

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 INDIVIDUAL  SMALL BUSINESS CONCERN  NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any application any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING Timothy R. Bratton  
 TITLE OF PERSON OTHER THAN OWNER President  
 ADDRESS OF PERSON SIGNING 303 Twin Dolphin Drive, Redwood City, California 94065

SIGNATURE  DATE 4/2/02